

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	CSR-6603-E
)	CSR-6604-E
)	CSR-6605-E
Cox Communications)	CSR-6606-E
Louisiana, LLC)	CSR-6607-E
)	CSR-6608-E
)	CSR-6609-E
Nine Petitions for Determination of Effective)	CSR-6610-E
Competition in Seventeen Local Franchise Areas)	CSR-6611-E
in Louisiana		

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 2005

Released: July 1, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers nine petitions filed with the Commission by Cox Communications Louisiana, LLC ("Cox") pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission's rules for a determination that Cox's cable systems serving seventeen communities in Louisiana (the "Communities") are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and are therefore exempt from cable rate regulation.¹ The Communities are listed in Attachment A. No opposition to any petition was filed. We grant the petitions finding that the Cox cable systems are subject to effective competition in the listed Communities.²

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵

¹ 47 C.F.R. §§ 76.7, 76.905(b)(1) & (2), 76.907; 47 U.S.C. § 543(a)(1).

² In an Addendum to its Petitions filed May 10, 2005, Cox clarifies that certain Community Unit Identifications ("CUIDs") noted on its Petitions were incorrectly included and should be disregarded. Cox states that CUIDs associated with unincorporated areas adjacent to or connected with the cities of Crowley, DeRidder, Franklin, Patterson and Rayne -- *i.e.*, LA0168, LA0202, LA0125, LA0124 and LA0169, respectively -- should be excluded from the Petitions. Cox asserts that its Petitions are based solely on Census data, zip codes and DBS penetration calculations for Cox's franchise areas in the cities themselves. Accordingly, Cox notes that for Crowley, DeRidder, Franklin, Patterson and Rayne, the Petitions should reflect only the CUIDs associated with the incorporated areas -- *i.e.*, LA0047, LA0012, LA0066, LA0005 and LA0045, respectively.

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

⁵ *See* 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁶ Turning to the first prong of this test, the DBS service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁷ The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest MVPD provider.⁸ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in the communities listed on Attachment A are DBS subscribers, we conclude that the population of those communities may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁹ We further find that the Cox cable systems have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the Communities.¹⁰ Cox has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.¹¹ Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Cox sought to determine the competing provider penetration in the Communities by purchasing an effective competition tracking report ("ECTR") pursuant to an agreement with the Satellite Broadcasting and Communications Association ("SBCA") that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.¹² Cox asserts that it is the largest MVPD in each of the Communities, except for Unincorporated St. Martin Parish, Louisiana because its subscribership exceeds the aggregate DBS subscribership in those Communities.¹³ Based upon the

⁶ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

⁹ *See* 47 C.F.R. § 76.905(g).

¹⁰ Cox Petitions at 4 and Exhibit 4.

¹¹ *Id.* at 5 and Exhibit 5.

¹² *Id.* at 7 and Exhibit 2. Cox states that it allocated the DBS subscribers reported in the ECTR to Cox's franchise areas using a Commission-approved allocation methodology. *See, e.g., Amzak Cable Midwest, Inc.*, 19 FCC Rcd 6208 (2004); *Charter Communications*, 19 FCC Rcd 6204 (2004).

¹³ *See* Addendum to Cox's Petition for Determination of Effective Competition at 1 (May 10, 2005).

aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that the Cox has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. As for St. Martin Parish, Cox asserts that although DBS providers serve more than 25 percent of occupied households in that Community in the aggregate, Cox is unable to determine which MVPD is the largest because SBCA does not provide data for individual DBS providers.¹⁴ Cox, however, asserts that it is subject to effective competition in St. Martin Parish because the number of Cox subscribers (2,370) is more than fifteen percent of the occupied households as reported by the 2000 Census (11,403).¹⁵ The Commission has previously recognized that if the subscriber penetration for both the cable operator and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.¹⁶ Based on the foregoing, we conclude that Cox has submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

B. Low Penetration Effective Competition

5. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.”¹⁷ Cox asserts that it is subject to effective competition in St. Martin Parish under the low penetration effective competition test. Cox submitted information listed on Attachment A showing that its penetration rate in St. Martin Parish is 20.78 percent. Accordingly, we conclude that that Cox has demonstrated the existence of low penetration effective competition under our rules in St. Martin Parish.

¹⁴ *Id.* at 2.

¹⁵ *Id.*, see also Cox Petitions at 9, n.26 and Exhibits 1, 3 (calculating net (unincorporated) Census data for St. Martin Parish).

¹⁶ See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002). 2,914 DBS subscribers ÷ 11,403 St. Martin Parish 2000 Census Households = 25.55%; 2,370 Cox subscribers ÷ 11,403 St. Martin Parish 2000 Census Households = 20.78%.

¹⁷ 47 U.S.C. § 543(1)(1)(A).

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petitions filed by Cox Communications Louisiana, LLC for a determination of effective competition in the Communities listed on Attachment A **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Cox Communications Louisiana, LLC in the affected named Communities **ARE REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹⁸ 47 C.F.R. § 0.283.

Attachment A

Cox Communications Louisiana, LLC (“Cox”) Cable Systems Subject to Competing Provider
Effective Competition

CSR-6603-E through CSR-6611-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Bastrop, City	LA0025	16.87%	4,723	797
Breaux Bridge, City	LA0097	23.09%	2,512	580
Crowley, City	LA0047	18.79%	5,294	995
DeRidder, City	LA0012	38.51%	3,819	1,471
Franklin, City	LA0066	19.93%	3,026	603
Henderson, City	LA0183	23.08%	546	126
Lake Charles, City	LA0022	15.45%	27,974	4,322
Mer Rouge, Village	LA0386	44.32%	264	117
Minden, City	LA0110	29.65%	5,166	1,532
New Iberia, City	LA0023	19.44%	11,756	2,285
Parks, Village	LA0181	20.29%	207	42
Patterson, City	LA0005	15.28%	1,852	283
Rayne, City	LA0045	26.95%	3,183	858
Ruston, City	LA0024	18.46%	7,621	1,407
Parish of St. Martin (Unincorporated)	LA0182	25.55%	11,403 ¹⁹	2,914
St. Martinville, City	LA0170	20.43%	2,496	510

¹⁹ Cox states that the 2000 Census reported 17,164 occupied households in St. Martin Parish, including the occupied households in the City of Breaux Bridge, the City of Henderson, the Village of Parks and the City of St. Martinville. According to Cox, for purposes of determining DBS penetration accurately in Cox’s St. Martin Parish franchise area, occupied households in these incorporated areas were subtracted from the total occupied households in the Parish because Cox holds separate franchises in these areas (17,164-2,512) [Breaux Bridge] – 546 [Henderson] – 207 [Parks] – 2,496 [St. Martinville] = 11,403.

Sulphur, City	LA0064	15.79%	7,901	1,248
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Cox Communications Louisiana, LLC (“Cox”) Cable Systems Subject to Low Penetration Effective Competition

CSR-6607-E

Communities	Franchise Area Households+	Cable Subscribers+	Penetration Level
Parish of St. Martin	11,403	2,370	20.78%

(Unincorporated)

CPR = Percent DBS penetration

+ = See Cox Petitions and Addendum